

II. DISCUSSION

A judgment of conviction imposing a sentence of imprisonment “constitutes a final judgment and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824, 130 S. Ct. 2683, 177 L.Ed.2d 271 (2010) (quoting 18 U.S.C. § 3582(b)); *see also* 18 U.S.C. § 3582(c). One such circumstance, invoked by Pierre, arises from 18 U.S.C. § 3582(c)(1)(A)(i), which authorizes a district court to reduce a term of imprisonment when “extraordinary and compelling reasons” for a reduction exist that are “consistent with applicable policy statements issued by the Sentencing Commission,” and other procedural and substantive requirements are met. 18 U.S.C. § 3582(c)(1)(A).

Although Pierre has met section 3582(c)(1)(A)’s exhaustion requirement, he has not met the statute’s requirement that “extraordinary and compelling reasons” exist “consistent with applicable policy statements issued by the Sentencing Commission,” warranting a reduction of his sentence. Pierre’s motion, therefore, must be dismissed for lack of jurisdiction.

A. Pierre Has Met Section 3582(c)(1)(A)’s Exhaustion Requirement.

Pierre’s compassionate-release motion may only be considered if he first meets section 3582(c)(1)(A)’s exhaustion requirement. The statute provides that a court may not consider any modification to a defendant’s sentence under section 3582(c)(1)(A)(i) unless a motion for such a modification is properly made by the Director of the BOP or by a defendant who has fully exhausted his or her administrative remedies. 18 U.S.C. § 3582(c)(1)(A). The Director of the BOP may request a sentence reduction in court at any time. *Id.* A defendant may also make such a

further the purposes set forth in [18 U.S.C. § 3553(a)(2)].” And, as particularly relevant here, in 28 U.S.C. § 994(t), “Congress instructed the Commission to ‘describe what should be considered extraordinary and compelling reasons for sentence reduction [under section 3582(c)(1)(A)], including the criteria to be applied and a list of specific examples.’” *United States v. Garcia*, 655 F.3d 426, 435 (5th Cir. 2011) (quoting 28 U.S.C. § 994(t)).

The Commission’s policy statements, issued under 28 U.S.C. § 994(t), are binding concerning what should be considered extraordinary and compelling reasons for sentence reduction under 18 U.S.C. § 3582(c)(1)(A). As the Fifth Circuit has explained, “a common sense reading” of section 3582(c)(1)(A)’s phrase that a sentence reduction must be “consistent with applicable policy statements issued by the Sentencing Commission,” is that, “regardless of whether Congress wanted [the Commission’s] policy statements to be binding in the sentencing context, it wished them to be binding in § 3582(c) proceedings.” *Id.* “If a sentence reduction is inconsistent with a policy statement, it would violate § 3582(c)’s directive, so policy statements must be binding.” *Id.*; *see also Dillon*, 560 U.S. at 827 (explaining that the Commission’s pertinent policy statements are binding on courts where 18 U.S.C. § 3582(c)(2)—using the same language as section 3582(c)(1)(A)—permits a sentencing reduction based on a retroactive guidelines amendment only if “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”).

Thus, Pierre cannot obtain a sentence reduction under section 3582(c)(1)(A) merely by asserting reasons that he, or this Court, might believe are sufficiently “extraordinary and compelling” to justify a sentence reduction. Instead, under the plain text of 18 U.S.C. § 3582(c)(1)(A) and 28 U.S.C. § 994(t), as well as controlling precedent, Pierre’s proffered reasons must be consistent with the Sentencing Commission’s applicable policy statement concerning what

should be considered extraordinary and compelling reasons for a sentence reduction under section 3582(c)(1)(A).

2. Pierre fails to satisfy section 3582(c)(1)(A) because his alleged “extraordinary and compelling reasons” for sentence reduction are not “consistent with applicable policy statements issued by the Sentencing Commission.”

Pierre’s compassionate-release motion turns on his assertion that the risks to his health associated with COVID-19, coupled with his existing chronic kidney disease, heart disease, hypertension, and Hepatitis C, constitute extraordinary and compelling reasons to reduce his sentence. Pierre’s assertion fails because it is untethered to the Sentencing Commission’s binding applicable policy statement in section 1B1.13 of the Sentencing Guidelines. Section 1B1.13 describes what will be considered “extraordinary and compelling reasons” for sentence reduction under section 3582(c)(1)(A)(i) and provides no basis for a reduction based on COVID-19.

Section 1B1.13 allows a sentence reduction for “extraordinary and compelling reasons” only if the reasons are “consistent with this policy statement.” U.S.S.G. § 1B1.13(1)(A), (3).² Application note 1 to the policy statement explains that “extraordinary and compelling reasons exist under any of the circumstances set forth below,” which include only: (a) a defendant suffering from a terminal illness or other medical condition “that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover”; (b) a defendant at least 65 years old who “is experiencing a serious deterioration in physical or mental health because of the aging process” and “has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less”; (c) a defendant

² The policy statement is binding under the express terms of section 3582(c)(1)(A), and because it concerns only possible sentence reductions, not increases, it is not subject to the rule of *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). See *Dillon*, 560 U.S. at 824–28 (rejecting the proposed application of *Booker* in the related context of a proceeding under section 3582(c)(2)); *United States v. Dublin*, 572 F.3d 235, 237–39 (5th Cir. 2009) (rejecting application of *Booker* to sentence reductions under 18 U.S.C. § 3582).

who has minor children without a caregiver or with an incapacitated spouse or partner who needs the defendant to be the caregiver; or (d) “[a]s determined by the Director of the Bureau of Prisons, . . . an extraordinary and compelling reason other than, or in combination with, the [above] reasons.” *Id.*, comment. (n.1(A)–(D)).

Consistent with the application note, the BOP has issued Program Statement 5050.50 (“PS 5050.50”), which describes the BOP’s consideration of compassionate-release requests. PS 5050.50, which was amended effective January 17, 2019, following the passage of the First Step Act, sets forth in detail the BOP’s definition of circumstances that may support a request for compassionate release, limited to the same bases identified by the Commission: serious medical conditions, advanced age, and family circumstances.³ *See* PS 5050.50 ¶¶ 3–6.

Neither the Commission’s policy statement nor PS 5050.50 provide a basis for compassionate release based on Pierre’s COVID-19 concerns. Instead, the grounds for release are limited to individual circumstances involving health, age, family responsibilities, and other reasons as determined by the Director of the BOP. For this reason, courts have concluded that an inmate’s concerns about risks associated with the spread of COVID-19 are not consistent with the policy statement of the Commission as required by section 3582(c)(1)(A). *See, e.g., United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (explaining that “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread”); *United States v. Eberhart*, No. 13-CR-313-PJH-

³ PS 5050.50 also requires consideration of a list of nonexclusive factors: “the defendant’s criminal and personal history, nature of his offense, disciplinary infractions, length of sentence and amount of time served, current age and age at the time of offense and sentencing, release plans, and ‘[w]hether release would minimize the severity of the offense.’” *United States v. Saldana*, 807 F. App’x 816, 819 (10th Cir. 2020) (quoting PS 5050.50 ¶ 7).

1, 2020 WL 1450745, at *2 (N.D. Cal. Mar. 25, 2020) (“General concerns about possible exposure to COVID-19 do not meet the criteria for extraordinary and compelling reasons for a reduction in sentence set forth in the Sentencing Commission’s policy statement.”).

Pierre filed his motion with this Court seeking compassionate release under 18 U.S.C. § 3582(c)(1)(A) on the grounds that he suffers from chronic kidney disease, heart disease, hypertension, and Hepatitis C, which place him at a greater risk to contract COVID-19. But these conditions do not provide a basis for compassionate release. According to his BOP Inmate Profile, Pierre is classified at Care Level 2 “Stable/Chronic Care.” Care Level 2 inmates are stable outpatients who require clinician evaluations monthly to every 6 months. Their medical and mental health conditions can be managed through routine, regularly scheduled appointments with clinicians for monitoring. Enhanced medical resources, such as consultation or evaluation by medical specialists, may be required from time to time. *See BOP, Care Level Classification for Medical and Mental Health Conditions or Disabilities*, https://www.bop.gov/resources/pdfs/care_level_classification_guide.pdf (May 2019). Absent COVID-19, Pierre would present no basis for compassionate release because his medical ailments are appropriately managed and do not present any impediment to his ability to provide self-care in the institution.

The Court finds that Pierre presents no basis for compassionate release, outside the risks from COVID-19, because his medical conditions are being managed at his facility. Pierre fails to demonstrate how his current health conditions substantially diminishes his ability to provide self-care in the prison. It appears Pierre’s health conditions are stable. Pierre is not subject to a terminal illness and there is also no evidence he is unable to function in prison. Pierre has not indicated that he has any restrictions. Indeed, Pierre notes his motion does not fall under the “medical

Sentencing Guidelines providing that only the Director of the BOP may file such motions. *See supra* n.2. The First Step Act amendments to section 3582(c)(1)(A), however, did not change the substantive criteria that district courts must apply in making those decisions. The amendments also did not shift the authority to develop such criteria from the Sentencing Commission to the courts.⁵ Section 1B1.13’s application note 1(D) requires the Director of the BOP to determine whether an inmate has adequately demonstrated extraordinary and compelling reasons for sentence modification other than, or in combination with, the reasons described in subsections (A) through (C) of application note 1, i.e., a medical condition, age, and/or family circumstances. Pierre’s argument fails to recognize the difference between the First Step Act’s amendments related to the procedural requirements for seeking compassionate release in district court and the unamended substantive requirements that permit courts to grant compassionate release.

Among circuit courts, the Tenth Circuit first considered the issue when it addressed whether “post-sentencing developments in case law” might constitute an extraordinary and compelling reason under section 3582(c)(1)(A). *See United States v. Saldana*, 807 F.App’x 816, 818-20 (10th Cir. 2020). Rejecting this argument, the Tenth Circuit held “neither § 1B1.12 commentary nor BOP Program Statement 5050.50 identify post-sentencing developments in case law as an ‘extraordinary and compelling reason’ warranting a sentence reduction.” *Id.* at 820. Consistent with *Saldana*, the Tenth Circuit has continued to look to section 1B1.13 as binding

⁵ To the contrary, the First Step Act left unchanged two critical statutory commands vesting the Commission, not courts, with authority to set the applicable standard for “extraordinary and compelling reasons” warranting a sentence reduction: (1) any sentence reduction under section 3582(c)(1)(A) must still be “consistent with applicable policy statements issued by the Sentencing Commission”; and (2) under 28 U.S.C. § 994(t), “[t]he [Sentencing] Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of Title 18, *shall describe what should be considered extraordinary and compelling reasons for sentence reduction*, including the criteria to be applied and a list of specific examples,” *id.* (emphasis added).

1178, 1180 (7th Cir. 2020) (agreeing with Brooker and holding that there is no “applicable” policy statement for section 3582(c)(1)(A) motions after the First Step Act); *United States v. Jones*, 980 F.3d 1098, 1109 (6th Cir. 2020) (agreeing with Brooker and holding, “[u]ntil the Sentencing Commission updates § 1B1.13 to reflect the First Step Act, district courts have full discretion in the interim to determine whether an ‘extraordinary and compelling’ reason justifies compassionate release when an imprisoned person files a § 3582(c)(1)(A) motion”).

This Court remains persuaded that section 1B1.13’s substantive provisions apply to Section 3582(c)(1)(A) motions. The Court’s conclusion is driven by the fact that, through the First Step Act, Congress amended procedural provisions of section 3582(c)(1)(A), but left unamended the substantive criteria applicable to section 3582(c)(1)(A) motions. *See United States v. Conyers*, No. 4:12-CR-016-SDJ, 2020 WL 7480695, at *4–7 (E.D. Tex. Dec. 18, 2020). The First Step Act left unchanged two critical statutory commands vesting the Commission, not the courts, with authority to set the applicable standard for “extraordinary and compelling reasons” warranting a sentence reduction. First, any sentence reduction under section 3582(c)(1)(A) must still be “consistent with applicable policy statements issued by the Sentencing Commission.” Second, “[t]he [Sentencing] Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of Title 18, *shall describe what should be considered extraordinary and compelling reasons for sentence reduction*, including the criteria to be applied and a list of specific examples.” 28 U.S.C. 994(t) (emphasis added).

Under the circumstances, the Court cannot conclude the First Step Act’s procedural modification to section 3582(c)(1)(A), allowing inmates as well as the BOP to file compassionate-release motions, renders “inapplicable” the Commission’s policy statement on the substantive requirements governing such motions. *See Conyers*, 2020 WL 7480695, at *4–7. Section 1B1.13’s

provisions concerning “extraordinary and compelling reasons” for a sentence reduction are, on their face, procedurally neutral. The Court can discern no principled reason to treat a purely procedural expansion of section 3582(c)(1)(A) as nullifying section 1B1.13’s substantive guidance on compassionate release. There is also no reason to believe that Congress intended to effectuate, through the First Step Act, the implementation of multiple, varying standards for courts’ consideration of compassionate-release motions under section 3582(c)(1)(A): one text-bound standard for BOP-filed motions and a myriad of differing standards for defendant-filed motions to be developed and applied on a case-by-case basis by district courts across the country. *See Conyers*, 2020 WL 7480695, at *4–7.

Congress decided to leave both section 3582’s requirement that any reduction be consistent with the applicable policy statement and section 994’s authorization and directive of the Sentencing Commission to promulgate the policy statement undisturbed. Because the language of the statutes at issue is unambiguous and provides no basis to nullify entirely or in part the application of section 1B1.13’s substantive criteria to section 3582(c)(1)(A) motions, the Court concludes that section 1B1.13 provides the Sentencing Commission’s “applicable” policy statement concerning the standard to be applied in evaluating whether “extraordinary and compelling reasons” support a sentence reduction. *See id.* Likewise, the Court remains bound by Fifth Circuit precedent confirming that the Sentencing Commission’s policy statements are binding in section 3582(c) proceedings. *See Garcia*, 655 F.3d at 435 (“If a sentence reduction is inconsistent with a policy statement, it would violate § 3582(c)’s directive, so policy statements must be binding.”).

For these reasons, the Court will adhere to the controlling text of section 3582, together with Supreme Court and Fifth Circuit precedent, confirming that any proposed sentence reduction

SIGNED this 9th day of March, 2021.

A handwritten signature in black ink, reading "Amos Mazzant". The signature is written in a cursive style with a horizontal line underneath it.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE